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August 1, 1996

Michael Clark  
Regional Director  
EPA Region 10  
1200 6th Avenue  
Seattle, WA 98101

Re: Request for Revocation of  
Oregon DEQ Air and Water Programs

Dear Mr. Clark:

I represent Northwest Environmental Defense Center, Oregon Trout, and the Oregon Chapter of the Sierra Club in this matter.

As you know, the delegation of the federal Clean Air Act ("CAA") and Clean Water Act ("CWA") programs to the state of Oregon is based in large part on EPA's premise that **any** party who comments during the evaluation and issuance of a discharge permit has a right comparable to that which would be allowed in federal court to appeal the issuance of such a permit in court. See, 40 CFR § 123.30 (CWA) and 40 CFR § 70.41(b)(3)(x) (CAA).

I enclose a copy of a recent Oregon Supreme Court decision, *Local 290 v. DEQ, et al*, which unfortunately concludes that "representational standing" does not exist under the Oregon Administrative Procedures Act ("APA"). This decision means that in Oregon if the party commenting on a CWA or CAA permit happens to be a public interest group (representing the interest of its members) such a group probably does not have standing under the Oregon APA to challenge the issuance of a permit. This is fundamentally different from the law governing federal challenges, which allows representational standing. See, *Hunt v. Washington State Apple Advert. Comm.*, 432 US 333, 53 L.Ed.2d 383, 97 S.Ct. 2434 (1977).

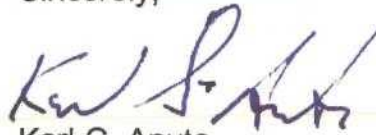
Michael Clark  
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Thus, the Oregon Clean Air and Clear Water programs no longer meet the criteria of federal law for delegation. This situation is rather ironic, since it appears to be virtually identical to that which caused EPA to promulgate 40 CFR 123.30 in the first place. See, Vol. 61, #90, Fed. Reg. p. 20972-80 (5/8/96).

Until or unless the Oregon APA is amended to allow representational standing, probably neither of the Oregon CAA or CWA discharge permit programs now meet the requirements of federal law. Consequently, my clients request that EPA immediately initiate revocation of authority proceedings for both programs.

If you need more information to begin such proceedings, please let me know.

Sincerely,



Karl G. Anuta

KGA:PM  
Enclosure

cc: Langdon Marsh, Director DEQ, w/enc.  
Governor John Kitzhaber, w/enc.  
Clients, w/enc.

Filed: July 18, 1996

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of the Air  
Contaminant Discharge Permit  
Application of Willamette  
Industries, Inc.

RECEIVED

JUL 18 1996

LOCAL NO. 290, PLUMBERS AND  
PIPEFITTERS, and on behalf of  
CERTAIN INDIVIDUAL MEMBERS  
RESIDING IN ALBANY, OREGON,  
et al., and ROYCE CLOUSE,

Respondents on Review,

v.

OREGON DEPARTMENT OF  
ENVIRONMENTAL QUALITY and THE  
ENVIRONMENTAL QUALITY COMMISSION  
OF OREGON,

Petitioners on Review,

and

WILLAMETTE INDUSTRIES, INC.,

Petitioner on Review.

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In the Matter of the Air  
Contaminant Discharge Permit  
Application of Glenbrook  
Nickel Company and

In the Matter of the NPDES  
Permit Application of  
Glenbrook Nickel Company.

LOCAL NO. 290, PLUMBERS AND  
PIPEFITTERS, AND CERTAIN  
INDIVIDUAL MEMBERS,

Respondents on Review,

v.

OREGON DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Petitioners on Review,

and

THE ENVIRONMENTAL QUALITY  
COMMISSION OF OREGON,

Defendant,

and

GLENBROOK NICKEL COMPANY,

Petitioner on Review.

(CC 9302-00754, 9204-02467; CA A81725, A82407;  
SC S42666, S42667, S42668, S42677)  
(Consolidated for argument and opinion)

On review from the Court of Appeals.\*

Argued and submitted May 9, 1996.

John T. Bagg, Assistant Attorney General, Salem, argued the cause for petitioners on review/respondents on review Oregon Department of Environmental Quality and the Environmental Quality Commission of Oregon. With him on the briefs were Theodore R. Kulongoski, Attorney General, and Virginia L. Linder, Solicitor General.

William H. Walters, of Miller, Nash, Wiener, Hager & Carlsen, Portland, argued the cause for petitioner on review Willamette Industries, Inc.

Lori Irish Bauman, Portland, argued the cause for petitioner on review Glenbrook Nickel Company. With her on the brief was Frank Langfitt, III, Portland.

Linda K. Williams, Portland, argued the cause and filed the brief for respondents on review Local 290, Plumbers and Pipefitters, et al.



Karl G. Anuta, of Larry Sokol & Associates, P.C., Portland, filed the briefs in S42667 and S42668 for amici curiae Northwest Environmental Defense Center, Pacific Coast Federation of Fishermen Association, Northwest Environmental Advocates, Bicycle Transportation Alliance, WaterWatch of Oregon, The Sierra Club, Oregon Natural Resources Council, Oregon Trout, Inc., Oregon Natural Desert Association, and American Civil Liberties Union Foundation of Oregon, Inc.

Thomas M. Christ, Portland, filed a brief in S42667 for amicus curiae ACLU Foundation of Oregon, Inc.

Laura A. Schroeder, Portland, filed a brief in S42667 for amicus curiae Oregon Water Resources Congress.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Fadeley, Graber, and Durham, Justices.\*\*

GILLETTE, J.

The decisions of the Court of Appeals are reversed. The judgments of the circuit court are affirmed.

\*Appeals from Multnomah County Circuit Court,  
Philip Roth, Judge.  
136 Or App 213, 901 P2d 921 (1995);  
Lee Johnson, Judge.  
136 Or App 544, 901 P2d 919 (1995).

\*\*Unis, J., retired June 30, 1996, and did not participate in this decision.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Petitioners on Review

[ ] No costs allowed.

[X] Costs allowed, payable by: Respondents on Review

[ ] Costs to abide the outcome on remand.

MONEY JUDGMENT

Judgment #1

Judgment #2\*

Creditor: \_\_\_\_\_

State of Oregon,  
Judicial Department

Debtor: \_\_\_\_\_

Amount: Costs: \_\_\_\_\_

Unpaid filing fee: \_\_\_\_\_

Attorney Fees \_\_\_\_\_

TOTAL: \_\_\_\_\_

\$ \_\_\_\_\_

Interest: Simple, 9% per annum, from the date of this appellate judgment.

\*Judgment for unpaid filing fees. ORS 21.605(1)(c).

This section to be completed when the appellate judgment issues. See ORAP 14.05.

NOTICE OF EXPENSES AND COMPENSATION UNDER ORS 138.500(4)

The appellate court has affirmed the conviction in this criminal case and has certified expenses and compensation of appointed counsel. This is notice to the trial court so that it may exercise its discretion under ORS 161.665(2) to include the expenses and compensation of appointed counsel in the final judgment, in addition to transcript preparation expenses allowed by the trial court. The court has certified expenses and compensation in the amount of \$\_\_\_\_\_.

This section to be completed when the appellate judgment issues. See ORAP 14.05.

Appellate Judgment Effective Date:

SUPREME COURT  
(seal)

1 GILLETTE, J.

2 These administrative law cases, consolidated in this  
3 court for purposes of argument and decision, involve challenges  
4 by Local 290, Plumbers and Pipefitters Union (the Union), to air  
5 and water discharge permits issued by the Department of  
6 Environmental Quality (DEQ) to Glenbrook Nickel Company and to an  
7 air discharge permit issued by DEQ to Willamette Industries, Inc.  
8 In each case, the Union asserted that the issuance of the permits  
9 violated various state and federal laws and alleged that it had  
10 representational standing to bring the challenges on behalf of  
11 its members. In the case of the Willamette Industries permit, a  
12 named Union member also was listed as a petitioner.<sup>1</sup>

13 The Union brought these challenges to the DEQ orders  
14 pursuant to ORS 183.484, a part of the Oregon Administrative  
15 Procedures Act (APA), which provides for judicial review of  
16 orders in "other than contested cases." Judicial review of such

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1 <sup>1</sup> In case number 9204-02467, involving the Glenbrook  
2 Nickel Company permits, the Union alleged that it was acting on  
3 its own behalf and on behalf of "certain individual members." No  
4 "individual members" of the Union were identified.

5 In case number 9302-00754, involving the Willamette  
6 Industries permit, the Union alleged that it was acting "on  
7 behalf of certain individual members residing in Albany, Oregon,  
8 \* \* \* and Royce Clouse."

1 orders is conducted in the Marion County Circuit Court or in the  
2 circuit court for the county in which the petitioner has a  
3 principal business office. ORS 183.484(1). In these cases, the  
4 Union brought both proceedings in Multnomah County, where it has  
5 a principal office.

6 In each of the circuit court proceedings, which were  
7 heard before different judges, DEQ<sup>2</sup> moved for summary judgment on  
8 the ground that the Union had no standing to challenge the  
9 decisions to issue the permits. The Union responded that it had  
10 standing, both because it was a "person" "adversely affected or  
11 aggrieved," as that concept is embodied in ORS 183.484(3), and  
12 because it was entitled to act in a representational capacity on  
13 behalf of certain of its members who themselves would have  
14 standing. After a hearing, each trial court granted summary  
15 judgment to DEQ and dismissed the case before it.

16 The Union appealed both trial court decisions to the  
17 Court of Appeals. See ORS 183.500 (providing for appeals from  
18 the circuit court to the Court of Appeals in such circumstances).

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1 <sup>2</sup> For the sake of simplicity, we refer to the moving  
2 party in each case as "DEQ." In fact, intervenor Environmental  
3 Quality Commission (EQC) and permit holders Willamette Industries  
4 and Glenbrook Nickel joined in the motions and have participated  
5 actively in these cases throughout their course.



1 That court reversed the judgments entered in the trial courts on  
2 the ground that, although the Union could not show that it was in  
3 its own right either adversely affected or aggrieved, there was  
4 an issue of material fact that had to be resolved in order to  
5 determine whether the Union had standing in a representational  
6 capacity. Local No. 290 v. Dept. of Environ. Quality, 136 Or App  
7 213, 901 P2d 921 (1995) (the Glenbrook permit cases); Local No.  
8 290 v. Dept. of Environ. Quality, 136 Or App 544, 901 P2d 919  
9 (1995) (per curiam) (the Willamette Industries permit case).

10 We allowed the various petitions for review of DEQ  
11 (joined by the EQC), Glenbrook, and Willamette Industries in  
12 order to address the important issue of representational standing  
13 that is presented by the cases. For the reasons that follow, we  
14 now reverse the decisions of the Court of Appeals and reinstate  
15 the judgments of the circuit courts.

16 A petitioner for judicial review must establish that  
17 the petitioner has standing to invoke the judicial process. ORS  
18 183.484(3) provides in part:

19 "The petition shall state the nature of the  
20 petitioner's interest, the facts showing how the  
21 petitioner is adversely affected or aggrieved by the  
22 agency order and the ground or grounds upon which the  
23 petitioner contends the order should be reversed or  
24 remanded."

1 (Emphasis added.) DEQ and the permit holders assert that the  
2 Union cannot establish that it has standing under that statutory  
3 standard, because the Union itself is neither "adversely  
4 affected" nor "aggrieved," and because the statute does not  
5 permit a union or other organization that cannot meet one of  
6 those two criteria to seek judicial review in its own name on  
7 behalf of other persons who may themselves have standing.

8 The Court of Appeals disagreed. Relying on Rendler v.  
9 Lincoln Co., 302 Or 177, 184-85, 728 P2d 21 (1986), the court  
10 held:

11 "We do not believe that the pertinent statutes  
12 preclude representational standing in APA proceedings,  
13 or that the representative must be directly adversely  
14 affected or aggrieved to have standing in that  
15 capacity. Under the Rendler formulation,  
16 representational standing depends in part on whether  
17 the members or other represented persons would have  
18 been able to 'pursue' the matter at issue independently  
19 of the representative. That would be a superfluous  
20 necessity if the representative was directly injured  
21 and, therefore, had standing independently of the  
22 members. If the represented persons are adversely  
23 affected or aggrieved, and if 'the organization is  
24 representing [their] position \* \* \* on the disputed  
25 issues,' id. at 184, there is no logical reason why the  
26 organization itself must also meet the threshold of  
27 direct injury defined in the statute in order to have  
28 standing as a representative."

29 Local No. 290, 136 Or App at 218.

30 The question presented is one of statutory

1 interpretation. In interpreting a statute, this court seeks to  
2 determine and apply the intent of the legislature in enacting the  
3 statutory provision. PGE v. Bureau of Labor and Industries, 317  
4 Or 606, 610, 859 P2d 1143 (1993).<sup>3</sup> Our first level of analysis  
5 involves examination of the text and context of the statutory  
6 wording. If the legislative intent is clear from that  
7 examination, our inquiry is at an end. Id. at 611.

8 From the statutory text, it is clear that, in order to  
9 have standing, a "person" must either be "adversely affected" or  
10 "aggrieved." From context, ORS 183.310(7), we know that the  
11 concept of "person" in the APA includes associations and public  
12 and private organizations. The Union thus is a "person" for the  
13 purposes of ORS 183.484. We normally would be required next to  
14 determine the substantive content of the concepts of "adversely  
15 affected" and "aggrieved," but we are spared that task in this  
16 case by the fact that the Court of Appeals held that the Union is  
17 not adversely affected or aggrieved, which holding the Union did  
18 not seek to have reviewed, as well as by the candid admission of  
19 counsel for the Union at oral argument to that same effect. We

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1 <sup>3</sup> The Court of Appeals did not mention, and did not  
2 utilize, the PGE methodology in reaching the conclusion that it  
3 reached in this case.



1 thus are left with the question whether, in spite of the fact  
2 that it is neither adversely affected nor aggrieved, the Union  
3 nonetheless can have standing in this case.

4 When it is ruling on a standing issue, a reviewing  
5 court must focus on the wording of the particular statute at  
6 issue, because standing is not a matter of common law but is,  
7 instead, conferred by the legislature. See, e.g., Brian v.  
8 Oregon Government Ethics Commission, 319 Or 151, 156, 874 P2d  
9 1294 (1994) (so holding); People for Ethical Treatment v. Inst.  
10 Animal Care, 312 Or 95, 99, 817 P2d 1299 (1991) (same, citing  
11 Benton County v. Friends of Benton County, 294 Or 79, 82, 653 P2d  
12 1249 (1982)); Rendler, 302 Or at 180. In particular, it is  
13 important that courts not interpret the contours of standing in a  
14 particular case by looking at other statutes that confer standing  
15 in different circumstances. Benton County, 294 Or at 82. For  
16 example, this court in People for Ethical Treatment, in defining  
17 the concept of "aggrievement" in the context of the APA, declined  
18 to draw parallels from earlier decisions in the land use context  
19 that had defined the same concept. 312 Or at 105.

20 The foregoing illustrates the fundamental error of the  
21 Court of Appeals, which drew on Rendler, a special proceeding  
22 involving the vacation or abandonment of a road, to decide that



1 the APA embraces the concept of representational standing.  
2 Rendler did not deal with standing under the APA.<sup>4</sup> The decision  
3 was based on the discretionary standard in ORCP 33 C that permits  
4 a trial judge to allow intervention in a case by a "person who  
5 has an interest in the matter." So understood, it does not  
6 inform the present inquiry.

7 The Union argues that Ore. Newspaper Pub. v. Peterson,  
8 244 Or 116, 415 P2d 21 (1966), supports its position; but that  
9 case, too, is inapposite. The case involved a challenge brought  
10 under ORS 183.400, the declaratory judgment provision of the APA,  
11 by a number of newspapers and their trade association against an  
12 administrative regulation concerning the advertising of drug  
13 prices. The regulation had resulted in the cancellation of some  
14 advertising that otherwise would have been placed with some of  
15 the complaining newspapers. The court ruled that the fact that  
16 the loss of advertising revenue was a direct result of the  
17 regulation meant that the newspapers were "aggrieved" and,

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1 <sup>4</sup> Rendler did cite one APA decision, Marbet v. Portland  
2 Gen. Elect., 277 Or 447, 561 P2d 154 (1977), but only by way of  
3 illustrating the proposition that, once an individual or group  
4 has been granted standing as an interested party, limitations  
5 that otherwise arguably might exist with respect to standing  
6 become irrelevant. 302 Or at 180, 184 n 5.

1 therefore, should have standing to maintain their challenge.<sup>5</sup>

2 244 Or at 120-21. By contrast, it is conceded in this case that  
3 the Union itself is not aggrieved.

4 When our inquiry is limited appropriately to the text  
5 and context of the APA, the answer to the question presented is  
6 not difficult. ORS 183.484 makes no mention of  
7 "representational" standing, and the statutory context does not  
8 support such an inference. Indeed, that statute requires that  
9 the person bringing the petition show how that person is  
10 adversely affected or aggrieved. We are admonished not to add to  
11 a statute words that the legislature has omitted. ORS 174.010;  
12 see PGE, 317 Or at 610-11 (referring to rules of statutory  
13 construction contained in ORS 174.010 as applying at first level  
14 of inquiry). In order to grant standing to the Union in these  
15 cases, we would have to violate that tenet of statutory  
16 construction, by adding a provision that a petition is sufficient  
17 if, although the petitioner is neither adversely affected nor

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1 <sup>5</sup> The "aggrievement" concept recognized by the court in  
2 Ore. Newspaper Pub. later served as the guiding principle  
3 underlying the legislature's adoption, in 1971, of an expanded  
4 definition of standing under the APA to include those who were  
5 "aggrieved" by an action of an administrative agency. See  
6 discussion of the legislative history of the 1971 amendment to  
7 the APA in People for Ethical Treatment v. Inst. Animal Care, 312  
8 Or 95, 100 & n 6, 817 P2d 1299 (1991).

1 aggrieved, the petitioner claims to be acting on behalf of  
2 another person who does meet one of those two criteria. It  
3 follows that, on the basis of the first-level inquiry under PGE,  
4 the legislative intent behind the standing provision in ORS  
5 183.484 is clear.

6 On the basis of the foregoing statutory interpretation,  
7 the Union does not have standing to maintain these proceedings.  
8 The contrary decisions of the Court of Appeals were erroneous.

9 Our holding with respect to representational standing  
10 leaves one remaining issue. As noted, the case involving the  
11 challenge to the Willamette Industries permit included an  
12 individual petitioner as well as the Union. The Court of Appeals  
13 did not, in its per curiam disposition of that case, purport to  
14 deal with the question of standing of that individual petitioner.  
15 In most circumstances, we therefore would remand that case to the  
16 Court of Appeals to deal with the remaining issue. However, we  
17 see no reason to prolong these cases. We have examined the  
18 transcript of the deposition of the individual petitioner. It  
19 reveals that the individual petitioner has no direct, personal  
20 interest in the outcome of the case. We conclude that, as a  
21 matter of law, inclusion of that person does not create standing  
22 to maintain the proceeding, because of his lack of a stake in the

1 outcome.

2 The decisions of the Court of Appeals are reversed.

3 The judgments of the circuit court are affirmed.

for  
7702-

Dave Gravallese